

Chesapeake Bay Local Assistance Board  
Local Program Review Committee for the Southern Area  
Department of Conservation and Recreation  
101 N. 14<sup>th</sup> Street, 17<sup>th</sup> Floor, James Monroe Building  
Richmond, Virginia  
Tuesday, October 26, 2004

**DRAFT MINUTES**

**SARC Members Present**

Ms. Sue H. Fitz-Hugh  
Ms. Beverly Harper

Mr. David C. Froggatt  
Mr. Michael V. Rodriguez

**SARC Members Not Present**

Ms. Gale A. Roberts

**Staff Present**

C. Scott Crafton, Acting Division Director, DCR  
Ms. Martha Little, Chief of Environmental Planning, DCR  
Ms. Shawn Smith, Principal Environmental Planner, DCR  
Mr. Jakob Helmboldt, Senior Environmental Planner, DCR  
Mr. Ryan Link, Principal Environmental Planner, DCR  
Mr. David C. Dowling, DCR  
Mr. Michael Fletcher, DCR

**Local Government Officials Present**

*City of Suffolk*

Ms. Cynthia Taylor, Assistant Director of Planning

*City of Petersburg*

Mr. Leonard Muse, Planning Director

*Charles City County*

Mr. Bill Britton, Director of Planning  
Mr. John Bragg, Development Planner

*City of Norfolk*

Mr. Lee Rosenberg, Manager, Bureau of Environmental Services  
Mr. Brian Ballard

*Call to Order and Opening Remarks*

Mr. Crafton called the meeting to order and noted a quorum present. He noted that Mr. Maroon had a prior commitment.

Mr. Crafton said that the Board Retreat would be Thursday, November 18<sup>th</sup> at Westmoreland State Park. The retreat will begin at 9:30 a.m. and should conclude by 4:00 p.m.

The location for the December 13<sup>th</sup> meeting is to be determined, but will be in the Richmond area.

*Local Program Reviews – Phase I*

Mr. Helmboldt gave the following summary for Prince George County. He noted that Leon Hughes, Director of Planning for Prince George County was not present.

Mr. Helmboldt said that Mr. Hughes had faxed a section of the County Code that pertains to some of the recommendations in the staff report. Mr. Hughes thought it had been faxed a couple weeks ago by one of his staff members. Following a discussion between Mr. Hughes and Mr. Helmboldt regarding today's staff report it was determined the report had not been received. Mr. Helmboldt noted that as a result of the fax, portions of his staff report were modified.

Prince George County first adopted a local program on November 19, 1991, which was subsequently found consistent on June 22, 1995. Prince George County adopted local program amendments on August 10, 2004.

The County's original Phase I program was contained in several separate ordinances within the County Code. The most recent revisions were incorporated into a stand-alone ordinance and in so doing several significant changes required for consistency were omitted. As a result, staff has six (6) recommendations for consistency.

The County deleted language that designates a minimum Resource Management Area (RMA) of 150 feet in width in their revised ordinance. However, it is contained in another section of the County Code but is not referenced in their revised ordinance. Therefore, the County still needs to either make a reference to the code section or amend the language in their revised ordinance since the two designations are contradictory.

The County eliminated all but one reference to reduction of buffer widths in their revised ordinance. The revised Regulations, in order to more clearly articulate the intent of encroachments, eliminated language stating that buffers may be reduced. However, the section of the County Code that was faxed to DCR has not been reviewed for consistency and also

contains additional buffer reduction language as well as buffer equivalency language which needs to be addressed.

The County deleted the entire subsection of their draft ordinance that addressed the provisions for septic systems that are sited in CBPAs.

The County's ordinance does not specify their original program adoption date when addressing the provision for existing nonconforming uses and structures. The County merely defines such nonconformities "structures which existed at the time of adoption or which exists at the time of any amendments to this article". As written, the County's ordinance could be interpreted as defining nonconformities as existing use predating adoption on August 10, 2004.

Section 17-537 of Prince George County's revised ordinance omitted the Development Criteria for RPAs from their draft. However, this section does still appear in another part of their County Code, §17-431, but is not referenced, nor has it been updated to reflect the most current revisions to the Regulations. This has resulted in the omission of the types of development allowed in RPAs as well as all applicable conditions for the permitted development in the RPA as outlined under § 9 VAC 10-20-130.1 of the Regulations. These provisions of the Regulations are central to the proper administration of the County's Bay Act program and define the manner in which the RPA may be used.

Staff recommends that Prince George County's revised Bay Act Ordinance be found inconsistent with the Act and Regulations as a result of the significance of the outstanding requirements for full consistency.

It is staff's recommendation that the County be required to undertake and complete the six recommendations no later than June 30, 2005.

The committee agreed that the Board would consider a revised staff report that would reflect the information received by staff the morning of the SARC meeting.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommends that Prince George County's amended Phase I program be found inconsistent with § 10.1-2109 of the Act and § 9VAC10-20-60.1 and 2 of the Regulations and further that Prince George County undertake and complete the 6 recommendations contained in the staff report no later than June 30, 2005.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Helmboldt gave the following summary for the City of Petersburg. He noted that Leonard Muse, Petersburg's Director of Planning was present.

The City's Phase I ordinance was first adopted by the City Council on September 19, 1990 which was found consistent on March 25, 1993. The City of Petersburg adopted local program amendments on June 15, 2004.

The City failed to make several significant changes required for consistency with the Regulations, and as a result staff has eight (8) conditions for consistency. The City's revised ordinance does not include required changes to the provisions for agricultural lands, calling for a conservation plan as required by the General Performance Criteria of the Regulations.

The City's stormwater management requirements retained references to the Local Assistance Manual, Virginia Erosion & Sediment Control Handbook and the VDOT Drainage Manual as the source for engineering calculations. The Virginia Stormwater Management Handbook should be the sole reference in order to ensure that calculations are consistent with water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 3-20-10 et seq.).

The City failed to include in their adopted ordinance the conditions for alignment, design and buffer encroachments pertaining to exemption of public roads from the development criteria.

The City failed to include a complete list of utilities, including underground telecommunications and cable television, which may be exempt from the overlay district when the appropriate conditions are met.

The City failed to make appropriate changes to its ordinance relating to administrative waivers for the expansion of nonconforming principal structures. The City did not include the requirement that granting of such waivers is conditioned upon making the five required findings and to remove the reference to additions to such structures.

Most significantly, the City of Petersburg's revised ordinance omitted § 122-54, Required Conditions, from their previous ordinance, which outlined the RPA Development Criteria as required under § 9 VAC 10-20-130.1 of the Regulations. This has resulted in the omission of the types of development allowed in RPAs as well as all applicable conditions for the permitted development in the RPA as outlined under § 9 VAC 10-20-130.1 of the Regulations. Given that these provisions of the Regulations are central to the proper administration of the City's Bay Act program and define the manner in which the RPA may be used, the City must amend their ordinance to be consistent with the Regulations.

Staff recommends that Petersburg's revised Bay Act Ordinance be found inconsistent with the Act and Regulations as a result of the significance of the outstanding requirements for full consistency.

It is staff's recommendation that the City be required to undertake and complete the eight recommendations no later than June 30, 2005.

Mr. Muse noted that he was meeting with the DCBLA staff and the City's Director of Public Works on Thursday. He noted that the City had no fierce opposition to the recommendations.

**MOTION:** Ms. Fitz-Hugh moved that the Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Petersburg's amended Phase I program be found inconsistent with §10.10-2109 of the Act and §9VAC10-20-60.1 and 2 of the Regulations and further that the City undertake and complete the 8 recommendations contained in the staff report no later than June 30, 2005.

**SECOND:** Mr. Rodriguez.

**DISCUSSION:** None.

**VOTE:** Motion carried unanimously.

Mr. Link presented the following summary for the City of Suffolk. He noted that Cynthia Taylor, Assistant Director of Planning was present.

The City of Suffolk adopted their revised Chesapeake Bay Preservation Overlay District on November 19, 2003 as a component of their Uniform Development Ordinance.

On March 22, 2004 the CBLAB found the City's ordinance revisions consistent with the Act and Regulations subject to the condition that the City adequately address the six conditions identified in the staff report by September 30, 2004. Three of the six conditions consist of definition and/or reference revisions. In addition, the City is required to:

- Remove any reference to modification or reduction to the buffer within the overlay language
- Include performance criteria limiting impervious cover in the overlay language
- Removed graphic included in the document that refers to an "area of allowable BMP construction" within the buffer.

The City incorporated these recommendations into their ordinance and adopted a revised ordinance on August 18, 2004. Staff has reviewed the revised ordinance and found that it complies fully with the Act and Regulations.

Based on the above, staff recommends that the local program amendments adopted by the City of Suffolk on August 18, 2004 be found consistent with the Act and Regulations.

Ms. Taylor noted that the graphic was removed from the ordinance.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board the City of Suffolk's amended Phase I program be found consistent with § 10.1-2109 of the Act and §§9VAC10-20-60.1 and 2 of the Regulations.

SECOND: Mr. Rodriiguez.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Link presented the following update for the City of Norfolk. He noted that Mr. Lee Rosenberg, Bureau of Environmental Services and Mr. Brian Ballard from the City were present.

The City adopted its original Phase I program on August 28, 1990.

After addressing conditions and adopting several amendments the City's program was found consistent on March 27, 1997.

In response to the revised Regulations the City provided the Department of Conservation and Recreation with a draft copy of their revised program on December 15, 2003, with the stipulation that language would most likely change based on the findings of the IDA Ad Hoc committee. During the March meeting the Board deferred discussion of the City's program and the fact that they had not adopted based on the fact that IDA discussions were still ongoing.

Staff continued to work with the City on their ordinance revisions. The Division reviewed the City's draft revisions and provided written comments on May 18, 2004. The City responded to these comments via correspondence. In order to more fully address the concerns of the Department and the City, DCR staff met with the City on May 27, 2004. Many of the concerns were cleared up, however, several required changes to be made to the City's ordinance. Since the meeting between DCR and the City in May 2004, the Department staff have reviewed one additional draft of the City's ordinance.

During this same time period, the Department determined that the best way to move forward with the Residential IDA concept would be through a regulatory change. Therefore, it was decided by the Policy Committee that this issue would be examined during the upcoming regulatory revision process. The committee decided to work one-on-one with localities in the interim for those interested in pursuing IDA designations.

As a result of the timing of the above outlined events the City of Norfolk has not been formally brought in front of the Board regarding their ordinance revisions, thus, the City has had six additional months to address the concerns of the Division and to adopt their revised ordinance. However, as of this date the City has not adopted an ordinance that includes the revised Regulations, thus, the Department has no formal ordinance to comment on.

Based on the above summary of events, and based on the fact that the required Regulation revisions that are to be adopted are not required to include IDA changes, staff plans on bringing the City of Norfolk in front of the Board in December with a recommendation that they be found inconsistent.

Mr. Rosenberg said that the City is working closely with DCR staff. He said that the City's Bay Planner left in June and hiring positions were frozen until recently. Mr. Baldwin joined the staff on October 25. He said that he believed the City could complete the recommendations by March, 2005.

Mr. Crafton said that he would propose to the Director and the Chairman that the Board move ahead and find the City inconsistent. He noted that the Board needed to take this interim step to be consistent with actions taken with other localities.

No action on this item was taken by the Southern Area Review Committee.

Mr. Link provided the following update regarding the City of Chesapeake.

The City of Chesapeake adopted its revised Chesapeake Bay Preservation Area Overlay District Ordinance on December 9, 2003. The City adequately addressed most of the required changes required in the Regulation revisions. However, there are several items that the City must address in order to be fully compliant with the Act and Regulations.

At the August 10, 2004 meeting of the SARC, the City of Chesapeake requested that they be granted an extension so that they could formally respond to the draft staff report recommendations prepared for the August 10 SARC meeting. SARC agreed to this request. DCR staff met with City officials on September 14, 2004 to discuss the City's ordinance and status. All identified conditions were clarified and the City is proceeding with making the necessary revisions to their ordinance, however, will not be prepared to adopt their revised ordinance prior to the December Board meeting. The City has provided a timeline for adoption of the revisions with a final adoption date of April 2004.

Therefore staff will be presenting the City of Chesapeake's revised ordinance at the March SARC meeting for a finding of consistent with conditions.

In addition to the above, the City of Chesapeake was given a deadline of December 2004 for Phase II consistency. The required revisions have taken longer than expected since the City is revising their entire comprehensive plan, not just those items required under the Act. As of this date the City has provided the Department with a draft of their revised comprehensive plan. The Department has reviewed the draft plan and it seems to comply with all requirements of the Regulations. The Department will conduct a final review once the City adopts the Plan. The timeline for final adoption of the comprehensive plan, as provided by the City is similar to that of their ordinance, with final adoption scheduled for April 2004.



The final determination regarding the City's comprehensive plan will also be brought in front of the SARC during March.

*Local Program Reviews – Phase II Comprehensive Plans*

Ms. Smith presented the following summary for the Town of Painter.

The Town of Painter's comprehensive plan was reviewed on June 18, 1998 and was found consistent with one condition. The condition related to possible contamination threats from agricultural uses in the ground water recharge spine. The town adopted a revised plan on July 22, 2002 and addressed the single consistency item through the inclusion of information on ongoing activities of the Eastern Shore Soil and Water Conservation District to ensure agricultural uses do not pollute as well as discussions of the Shore's Pesticide Disposal program and the Agricultural Stewardship Act.

Staff feels that the additional information addresses the condition and recommends that the Town's Phase II program be found consistent.

MOTION: Mr. Froggatt moved that the Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Painter's amended Phase II program be found consistent with §10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Helmboldt presented the following summary for Charles City County. He noted that Mr. Bill Britton, Director of Planning and Mr. John Bragg were present at the meeting.

The County's comprehensive plan underwent review by the Board in 1998. The County's plan was found consistent with two conditions.

Recommendation #1 required that the Plan contain more analysis of the level of threat posed by the identified potential threats to groundwater. The revised plan included amendments to two sections, Hydrology and Soils, and provides a more comprehensive description of the implications and potential threats to groundwater quality posed by various land uses. The County has also included policies and programs that seek to mitigate the potential for water quality degradation resulting from the identified threats. It is staff's opinion that this condition is adequately addressed.

Recommendation #2 required the County to develop a riparian corridor management guidance document with site-specific shoreline erosion information and shoreline stabilization methods on



a reach basis as well as evaluating stream bank erosion conditions and recommending mitigation measures where appropriate.

The County completed their *Shorelands Management Manual* riparian corridor management guidance document for tidal shorelands in 1999 and amended the manual with the addition of an appendix with buffer modification and mitigation measures that were taken from CBLAD's Buffer Manual in January 2004.

The County conducted an evaluation of nontidal streams in the Chickahominy Basin, which was completed in 2003. This information was provided to CBLAD during the 2002 grant period and the final evaluation of the nontidal streams in the James Basin is to be completed as part of this year's grant program. The information collected as a result of these evaluations is to be used by the County when recommending mitigation measures when such needs are identified.

It is staff's opinion that this condition has also been adequately addressed and Department staff believes the amended Plan should be found consistent.

MOTION: Mr. Froggatt moved that the Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that Charles City County's amended Phase II program be found consistent with § 10.1-2109 of the Act and §9VAC10-20-60.3 of the Regulations.

SECOND: Mr. Rodrieguez.

DISCUSSION: None.

VOTE: Motion carried unanimously.

#### *Local Program Reviews – Compliance Evaluation*

Ms. Smith presented the following summary for the Town of Cape Charles.

The initial compliance evaluation for the Town of Cape Charles was completed by the Board on September 15, 2003. There were two recommendations for full compliance that the Town was to address by September 30, 2004. The recommendations were as follows: the town should develop a database or other method of tracking BMP installation and maintenance, and the Town must implement its septic pump-out program. In August of 2004, staff received information from the town relating to two recommendations.

The Town planner sent out notices and agreements to the three BMP owners in the Town for the maintenance. The town also provided a BMP inspection schedule to ensure maintenance is performed. The town has 12 existing septic systems, and sent out notices to these system owners notifying them of the required pump-out. The town notes that if an owner does not pump a system out, the town will have it pumped out and charge the owner.

Based on the information provided by the Town, it is staff's opinion that the two conditions have been met and the Town's program be found fully compliant.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that the Town of Cape Charles' implementation of its Phase I program be found compliant with §10.1-2109 and 2111 of the Act and §9VAC10-20-231 and 250 of the Regulations.

SECOND: Ms. Harper.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Link presented the following summary for the Town of Windsor.

Mr. Link noted that on the copy provided to Board Members Recommendation #2 on page 4 of the staff report should be a suggestion, therefore, there were only 3 recommendations. The Staff report and resolution were revised accordingly.

Prior to August 2003 Isle of Wight County administered the Town's CBPA program. Since that time Jay Randolph took the position of Zoning Administrator and is administrator for the Town's CBPA program. The County still oversees the Town's E&S program.

Given the fact that the Town is in a time of transition they have done a fantastic job in addressing the revisions to their ordinance. There are however, 3 recommendations that must be addressed in order for them to be fully consistent, these are:

1. The Town must develop a process to ensure regular maintenance of BMPs
2. The Town must establish a process that ensures WQIAs are submitted for all required projects.
3. The Town must ensure that all required notations are included on submitted site plans.

Based on the above, staff recommends that certain aspects of the Town's implementation of their Phase I program do not fully comply with the Act and Regulations, and the Town address the 3 recommendations contained in the report no later than December 31, 2005.

MOTION: Ms. Fitz-Hugh moved that the Southern Area Review Committee recommends to the Chesapeake Bay Local Assistance Board that certain aspects of the Town of Windsor's implementation of its Phase I program do not fully comply with §§10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and further that the Town undertake and complete the three recommendations contained in the report no later than December 31, 2005.

SECOND: Mr. Rodriguez.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Crafton asked staff to provide additional locality updates.

Mr. Helmboldt gave the following update for the City of Richmond.

At the June CBLAB meeting the City of Richmond's compliance evaluation was presented by Alex Adams and Mr. Helmboldt. At the time the Board recommended that the review be tabled until the September Board meeting and revisited due to a number of staff recommendations for compliance that would be remedied by the City's adoption of a revised Bay Act ordinance.

Given that no discussion took place at the September meeting, Mr. Helmboldt noted that he wanted to apprise the Board of the City's current status as well as staff's intentions pertaining to continuing the review of the City's program for compliance.

An O&R was introduced yesterday, October 25 and will be acted upon on November 22 (by City Council).

The City has taken their program out of their Zoning ordinance and created a stand-alone ordinance and crafted it to be "bare bones" and to follow the Regulations as directly as possible.

The City is over-mapping their RMA in areas that are suspected to be possible RPAs in order to assure that regulatory authority will extend to those areas with regard to making in-field stream flow determinations.

Since there were so many issues that were raised during the compliance evaluation that related directly to the City's adoption of a revised ordinance, staff will extend to the City a one-year period to begin implementing their revised program. A follow-up evaluation of their program will be conducted after a year that will focus on the areas that were determined to be deficient in the initial compliance evaluation.

The intent is to provide adequate time to implement revised policies and procedures and to present the revised evaluation in March of 2006.

Ms. Smith noted that the Town of Onley is reviewing their entire zoning ordinance and that the Town's Planning Commission had made a recommendation to the Town Council, but that she was not certain when the Town Council would be acting on the revised ordinance.

There being no further business, Ms. Harper moved that the meeting be adjourned. Ms. Fitz-Hugh seconded.